



POLICE DEPARTMENT

The  
City  
of  
New York

July 12, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Raul Gabriel  
Tax Registry No. 936630  
28 Precinct  
Disciplinary Case No. 85237/09

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The above-named member of the Department appeared before me on March 14, 2011, charged with the following:

1. Said Police Officer Raul Gabriel, assigned to the 41<sup>st</sup> Precinct, while off-duty, on or about March 30, 2009, in the vicinity of [REDACTED], within the confines of the 48<sup>th</sup> Precinct, in Bronx County, New York, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said police officer having no right to do so nor any reasonable ground to believe that he had such right, caused damage to Ms. Person A [REDACTED] apartment door. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Raul Gabriel, assigned as indicated in Specification #1, while off-duty, on or about the date and location indicated in Specification #1, by physical menace, did intentionally place or attempt to place another person in fear of death, imminent serious physical injury or physical injury.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 120.15 – MENACING IN THE THIRD DEGREE

3. Said Police Officer Raul Gabriel, assigned as indicated in Specification #1, while off-duty, on or about the date and location in Specification #1, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said police officer caused Ms. Person A [REDACTED] alarm when he threatened to inflict serious bodily harm upon Ms. Person A if she called the police again on Person B [REDACTED] said police officer's brother. *(As amended)*

## P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

4. Said Police Officer Raul Gabriel, assigned as indicated in Specification #1, on or about the date and location in Specification #1, while off-duty, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that after being involved in a police incident, said police officer failed to immediately identify himself as a member of the New York City Police Department to on-duty responding officers.

## P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

5. Said Police Officer Raul Gabriel, assigned as indicated in Specification #1, on or about the date and location in Specification #1, while off-duty, was discourteous to on-duty New York City Police Sergeant Kathleen Montague in that he stated in sum and substance, “What the fuck that’s my brother.”

## P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to Specification Nos. 1, 3, 4, and 5. The Department made a motion to dismiss Specification No. 2. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification Nos. 1, 3 and 4 and Guilty of Specification No. 5. Specification No. 2 is dismissed.

Introduction

[Person A] is the complainant regarding the allegations made against the Respondent in Specification Nos. 1, 2 and 3. She did not appear to testify at this trial.

The Department made several attempts to locate Person A by subpoena and by attempting to contact her at her last known address by sending personnel to her address, with no success. She was interviewed by the Internal Affairs Bureau and the five-minute interview was recorded in Spanish. In lieu of the recorded interview, the Department opted to use the testimony of Officer Bautista and Sergeant Montague who were able to speak to Person A at the scene and testified as to what she told them about the incident. It should also be noted that this Court was informed that the criminal charges against the Respondent were dismissed by the District Attorney's office because Person A was uncooperative.

#### SUMMARY OF EVIDENCE PRESENTED

##### The Department's Case

The Department called Police Officer Henry Bautista and Sergeant Kathleen Montague as witnesses.

##### Police Officer Henry Bautista

Bautista, an eight-and-a-half-year member of the Department, is currently assigned to the 48 Precinct. On March 30, 2009, he was assigned to regular patrol with his partner, Police Officer Rafael Perez. At approximately 9:20 p.m., they responded to a radio transmission involving an assault in progress at [REDACTED] in the Bronx. Bautista described the building as a multiple-dwelling, five or six stories high. They responded to apartment [REDACTED] where Person A Person A opened the door. Bautista did not recall seeing any damage to the apartment door.

Bautista testified that Person A told them to enter the apartment so that residents of the neighboring apartments could not hear their conversation. Bautista did not notice Person A have any difficulty closing the door, nor did Person A complain of any damage to it. She informed them that she got into an argument with her Person B who she believed to be upstairs, in his mother's apartment, ■■■■■ and that she wanted him out of the building.

Person A remained in the apartment while Bautista and Perez went upstairs and knocked on apartment ■■■■■ A female opened the apartment door and, in response to a question by the police officers, told them that ■■■■■ had just left the apartment. The female never identified herself to the officers. Bautista and Perez proceeded to go back downstairs to apartment ■■■■■ where they took a report for the verbal argument that Person A had with ■■■■■.

Bautista estimated that he and Perez were in the building for approximately five to seven minutes. He explained that he spoke to Person A in Spanish because he noticed that she spoke in broken English when he first arrived at the building. Bautista never observed any other members of the Department while at the building, nor did any person make himself known to Bautista as an off-duty member of the Department. Person A did not inform Bautista that an off-duty member of the Department was involved in the domestic altercation.

On cross-examination, Bautista estimated the time it took him and Perez to reach the apartment in response to the radio run to be only a minute or two. He confirmed that he interviewed Person A but could not recall what the argument with ■■■■■ was about or confirm any details. He denied observing any physical evidence of an assault on either

Person A or near the apartment. Bautista did not see any other individuals, nor did he observe anything that would give him reason to believe that it was unsafe in the area. He confirmed that Person A made it clear that her allegations were only of a verbal altercation, not physical. At the time Bautista and Perez went upstairs, there was no order of protection, nor would he describe it as an "arrest situation." Rather, he agreed that his intent in going upstairs to find [REDACTED] was simply to speak with him and evaluate the situation further. Bautista denied ever seeing the Respondent that day. Bautista was not called back to the location that day, and it was not until later that he learned other units responded back to the location the same night.

Sergeant Kathleen Montague

Montague, a 20-year member of the Department, is currently assigned to the 48 Precinct, where she primarily works on domestic violence cases. On March 30, 2009, she was assigned as Patrol Supervisor and worked with a Police Officer Tanzi; both Montague and Tanzi were in uniform. At approximately 10:42 p.m., they responded to a radio transmission regarding a call to the Internal Affairs Bureau (IAB). She travelled to the location of the call, the apartment building to which Bautista had responded earlier in the day.

Upon arriving at apartment [REDACTED] Montague knocked on the door, which was opened by Person A. Montague testified that she observed dents on the metal apartment door and that the door opened up off the hinges. [Department's Exhibit (DX) 1 is photocopies of six photographs of the damaged door to apartment [REDACTED]<sup>1</sup>. Montague agreed

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<sup>1</sup> During the Respondent's testimony, the Court noted that the precise time the pictures were taken was never established.

that DX 1 is a fair and accurate depiction of the damages to the door she observed that day.]

While inside the apartment, Montague communicated with Person A through a neighbor, who translated for Montague. Person A stated that she had called IAB in regard to [REDACTED]'s brother (subsequently identified as the Respondent) coming to her house, threatening her, and damaging her door. Person A did not provide the name or identity of the Respondent, but stated he was a police officer in the Bronx. She complained that [REDACTED] assaulted her earlier that day, and that she had a mark on her neck and a bruise on her left arm as a result. Person A never requested medical attention, but Montague observed the injuries. According to Montague, Person A stated that the Respondent was at the apartment because he was upset that she had called the police earlier in the evening as a result of the confrontation with Valdez. She also stated that the Respondent told her he would kill her. Montague testified that Person A was nervous, upset, and shaking.

Person A then led Montague up to apartment [REDACTED] where Montague knocked on the door and inquired about [REDACTED]. Montague did not observe any damage to the outside of the door of apartment [REDACTED]. However, she could not answer whether there was any damage to the inside of the door because the door remained open for the few minutes she was inside the apartment. She asked if she could come inside, was let into the apartment by a female, at which point she observed [REDACTED] in the back bedroom. While inside the apartment building, Montague never observed any Department members, nor did any off-duty Department members make themselves known to her while on the scene. When asked how she knew the man was [REDACTED], Montague responded, "Because we asked him and he understood his name."

At this point, Montague placed [REDACTED] under arrest for the assault on Person A and led him downstairs, out of the apartment building. As Montague and Tanzi attempted to place [REDACTED] into their police car, he refused to bend his knees or sit down inside the vehicle. While they struggled to get him into the car, a private vehicle pulled up and double parked on the other side of the one-way street, behind the police car, to the left. This private car did not block the police vehicle such that it could not pull out.

According to Montague, the Respondent got out of the car and stated, "What the fuck," while facing [REDACTED]. She testified that she felt the comment was directed towards her and Tanzi. The Respondent did not identify himself as a member of the Department, nor was he in uniform at the time. Montague explained that she, nevertheless, knew that he was an off-duty member of the Department because she had seen a picture of him in uniform while inside apartment [REDACTED]. Montague told the Respondent to report to the 48 Precinct station house. Montague also testified that she heard the Respondent mumble something and state, "That's my brother," referring to [REDACTED]. While at the 48 Precinct station house, the Respondent was interviewed and taken to the Bronx Investigations Unit, resulting in his arrest for criminal mischief.

On cross-examination, Montague acknowledged that the reason she went to the location was because of an allegation against a member of the Department that had come through IAB. She was not aware of the earlier 911 calls to which Bautista and Perez had responded until later that night, after she left the location. Montague denied that Person A ever stated that she was assaulted in any way by the Respondent.

Montague explained that once upstairs, in apartment [REDACTED] the door to the bedroom in which [REDACTED] was located was closed, but she could nevertheless see him because it

was an accordion door, through which she could see a body. She denied ever observing or being questioned regarding damage to the inside door. She stated that [REDACTED] was lying in bed, pretending he was sleeping, with his eyes closed. At no time did [REDACTED] try to fight Montague in any way. Montague confirmed that, at this point, Tanzi handcuffed [REDACTED]. She then observed a picture on the dresser of the Respondent in uniform, but did not recognize him at the time. Montague claimed that, at this point, she "put two and two together" because, although she did not know the name or identity of [REDACTED]'s brother, she knew of the allegation against the Respondent, and Person A had informed her that [REDACTED]'s brother was a police officer.

Montague denied that [REDACTED] was intoxicated as she took him outside, although she admitted that he might have had a little alcohol on his breath. She did not intend to call for back-up to assist her in transporting him out of the apartment. Montague acknowledged that her police car was parked on a one-way street, on the far side of the apartment building. The Respondent pulled up on the building side and parked behind her vehicle such that the street was between them.

Upon arriving, Montague admitted hearing the Respondent say, "What the fuck," and, "That's my brother." She also heard him mumble something, although she could not discern whether the mumbling was in Spanish or English. She did not hear him yell anything in Spanish at [REDACTED]. Montague confirmed that she addressed him as "officer" and told him to report to the 48 Precinct station house. She further confirmed that it was, therefore, unnecessary for the Respondent to identify himself as a police officer since she had already acknowledged to him that she was aware of his employment with the Department. She explained that she had prior experience handling such matters, and she

brought the Respondent back to the station house because it was proper procedure to involve a duty captain and the inspections unit at the station house. The Respondent reported to the station house in his own vehicle.

Montague confirmed that, once back at the 48 Precinct station house, she was the arresting officer for the Respondent and Tanzi was the arresting officer for [REDACTED]. She did not conduct an official Department interview of the Respondent. She was called down to the District Attorney's office on the matter, but she did not know the outcome of the case.

On redirect-examination, Montague conceded that she never had definitive proof that the person who allegedly broke down Person A door was a member of the Department. Additionally, she acknowledged that she did not have proof the person in the photograph in apartment [REDACTED] was still an active member of the Department or that, upon arriving on the scene, the Respondent was an active member of the Department. She stated that the Respondent never showed her an identification card informing her of his status as an active member of the Department. He never orally informed Montague of his position with the Department. She denied that the Respondent ever spoke with Tanzi.

After the Respondent got out of his vehicle and mumbled whatever it was that he mumbled, Montague told him that she would suspend him. She stated that she did this because a crowd had begun to form and that his behavior was "causing a scene." Specifically, she feared that objects might be thrown off the roof, causing injury to the police officers at the scene. Montague explained that, when the Respondent arrived and used profanity, "he was loud enough that you heard him on the street," and confirmed that there were individuals other than Tanzi and herself at the location at the time.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent, a six-year member of the Department, is currently assigned to the 28 Precinct. In March 2009, he was assigned to the 41 Precinct in the Bronx as a full-duty police officer, but was not working that day. He testified that his half-brother, [REDACTED], had resided in apartment [REDACTED] for three or four years, alone and then with Person A. According to the Respondent, [REDACTED] "always" had problems with the law and alcohol, with many arrests for driving under the influence and instances of domestic violence.

The Respondent testified that on March 30, 2009, [REDACTED] called to inform him that Person A came home at 10:00 a.m. and called the police to have [REDACTED] escorted out. The Respondent told [REDACTED] to go upstairs to their mother's apartment but, to his knowledge, [REDACTED] left and went drinking. The Respondent received another call from [REDACTED] at approximately 9:00 p.m. [REDACTED] informed him that he was on the street, drunk, had no coat and nowhere to go. [REDACTED] did not have keys to the apartment where his mother and sister lived, and his mother had been in the hospital for a while. The Respondent told [REDACTED] to wait for him in front of the building so he could take him upstairs to their mother's apartment.

When the Respondent arrived, approximately ten minutes later, he saw his sister, who had just arrived home with no knowledge of what had been going on. The sister and the Respondent went up to apartment [REDACTED] and knocked on the door to inquire about [REDACTED]. The Respondent at first testified that upon his arrival at Person A's apartment the

door was fine but "looked like it was a little off the hinge." He subsequently testified upon review of photographs (DX 1), however, that he did not actually recall the door off of the hinge. According to the Respondent, the dents and paint damage in the middle of the door were present before that day. He testified that Person A was very angry, cursed him out, and slammed the door in his face "really, really hard." He then knocked "pretty hard for maybe like three or four times," to which Person A did not reply or open the door. He denied ever using his shoulder, kicking the door, or using any type of instrument to force the door open. The Respondent testified that Person A slammed the door harder than he hit it. Person A never accused him of breaking the door.

After leaving the apartment, the Respondent and his sister searched for [REDACTED]. They found him downstairs in the building with two beers in his hand. The Respondent testified that [REDACTED] appeared drunk. They discarded the beers and took him upstairs, where he removed [REDACTED]'s clothes and placed him in their mother's bedroom. The Respondent locked the bedroom door from the outside and instructed his sister to make sure he remained there. He testified that his mother locked the door from the outside every time she left and expressed his belief that there was no way [REDACTED] could have opened the door from inside the bedroom while intoxicated. He described the bedroom door as "sturdy," and disputed Montague's testimony that it was an accordion door. Rather, he described it as a "regular door" with small, little windows. He did not see any police officers present at the apartment building.

The Respondent testified that he later received a call from his sister, informing him that the police were at the apartment, and had kicked down the bedroom door to get to [REDACTED]. He got in his car and drove to the apartment building, where he observed

Montague struggling to place [REDACTED] in her police vehicle. He had never seen Montague prior to the incident. According to the Respondent, Tanzi grabbed his arm and stated, "Officer, call your delegate." He responded by asking Tanzi what he meant by the statement, and telling him that the incident had nothing to do with him. He proceeded to have a conversation with Tanzi in an attempt to find out why [REDACTED] was arrested. Tanzi refused to give him any information. The Respondent then told [REDACTED] in Spanish to stop complaining and get in the car. Montague told him she was going to suspend him, and to report to the 48 Precinct station house. He testified that he then got in his car and drove himself there.

The Respondent admitted that he was a little angry and might have cursed, although he did not recall for sure. He explained that his anger was directed toward his brother because he did not know what had occurred from the time he left him in the bedroom until the time he was arrested. At no time was his anger directed toward Montague nor did he intend to be insubordinate to her. Rather, he complied with her request the minute she spoke to him. He denied knowing that there was an allegation made against him by Person A. When asked why he did not identify himself as a police officer, he responded that Montague approached him as "officer," so he saw no reason to identify himself. He had no doubt in his mind that Montague and Tanzi knew he was a police officer.

Upon arriving at the 48 Precinct station house, the Respondent attempted to obtain information regarding why [REDACTED] was arrested. He saw Montague and questioned her regarding the incident, but she told him she had nothing to speak with him about. The desk officer approached the Respondent, suggested that he calm down, and

requested his identification. He then learned through his delegate that charges were being brought against him. He was released five hours later. No statements were taken from the Respondent or his sister that night, and the criminal charges against him were dismissed by the District Attorney's office because Person A was uncooperative.

The Respondent testified that he has not seen Person A since the date of the incident, and both she and [REDACTED] have since moved out of the apartment. He denied ever threatening to inflict serious bodily harm upon her and denied telling her that if she called the police, he would hurt her. As a result of the arrest, he was suspended from duty and subsequently placed on modified duty, where he was assigned to VIPER for a year. He has been back on full duty for close to one year.

On cross-examination, the Respondent acknowledged that [REDACTED] and Person A were married, but could not recall for how long or if it was a legal marriage. He conceded that it was probably a common law marriage, and had no knowledge of an actual marriage ceremony. He estimated that Person A had lived in apartment [REDACTED] with [REDACTED] since their child was born, approximately four years. Although he conceded that the police were called frequently between [REDACTED] and Person A he denied getting involved on any prior occasions. He explained that the reason he got involved this time was because [REDACTED] was on the street and he was concerned for [REDACTED]'s well-being.

The Respondent described his initial knock on the door as "regular." He asked Person A to open the door because he wanted to speak with her, but denied threatening her in any way. No neighbors came out at the time that the Respondent was banging on the door. Person A opened the door, yelled, "It's none of [your] business," and then cursed and slammed the door, which came very close to hitting the Respondent's face.

He conceded that this angered him, but denied banging on the door that hard or damaging it in any way.

After [REDACTED] discovered that the Respondent was charged with damaging the door, he informed him that, six months prior to the incident, he broke the door by kicking it open, off the hinge. [REDACTED] indicated that if the door is slammed hard enough, it comes off the hinge and that he is always fixing it. Referring to the inside, bedroom door in apartment [REDACTED] the Respondent described the lock he placed while his brother was sleeping inside as a “one of those silver pads...with a thick lock.” Because he reported to the station house when he left the scene, he did not have an opportunity that day to observe any damage to the door. Only when he went back to the apartment at a later time did he observe that the lock was hanging. Neither he nor his sister reported the damage to the police.

The Respondent denied that Tanzi struggled to place [REDACTED] inside the police vehicle. Rather, he testified that Montague dealt with [REDACTED], while he was met by Tanzi. He admitted using profanity immediately upon exiting his vehicle, but stated that it was directed toward [REDACTED] and not toward either Tanzi or Montague. He conceded that, although directed toward his brother, it was likely that Montague and Tanzi would have heard it, as they were located across the street, about a car length in distance away from him. He acknowledged that he was upset about the incident, and wanted to know why the police arrested [REDACTED] and broke the lock. At this point, he had not seen the broken lock, but stated he had no reason to believe his sister lied to him when she informed him of this. He denied ever getting within close proximity of Montague. Rather, he remained by his car the entire time and spoke with her from across the street.

FINDINGS AND ANALYSISSpecification Nos. 1, 2 and 3

In Specification No. 2 the Respondent is charged with the act of physical menace in that he intentionally placed or attempted to place Person A in fear of death, imminent serious physical injury or physical injury. The Department in their Notice of Amendment of Charges indicated that this specification "shall be dismissed."

Given that the Department did not move forward on these allegations, Specification No. 2 is dismissed.

In Specification No. 1, the Respondent is charged with causing damage to Person A apartment door. In Specification No. 3, he is further charged with causing Person A alarm when he threatened to inflict serious bodily harm to her if she called the police again on the Respondent's brother, [REDACTED]

As previously noted, Person A failed to appear to testify in this matter. The Department's attempts to locate and have Person A available for this trial was not successful. Since the Department opted to use the testimony of Officer Bautista and Sergeant Montague, who were able to speak to Person A at the scene, this Court is left to evaluate her hearsay allegations against the Respondent.

When Bautista arrived with Perez at Person A apartment at 9:20 p.m., he did not notice her having difficulty opening her apartment door and she did not complain of any damage to it. She informed him in Spanish and made it clear to them that she got into a verbal and not physical altercation with her [REDACTED] [REDACTED], who was upstairs in his mother's apartment. She wanted the officers to remove [REDACTED] from the building. They went to his mother's apartment simply to speak to him because they did not have an

“arrest situation” based on their conversation with Person A. A female opened the door and told them that [REDACTED] just left the apartment.

Bautista did not see evidence of a physical assault on either Person A or in the area of her apartment. They then took a report based a verbal argument between Person A and [REDACTED]

Montague responded to Person A apartment at approximately 10:42 p.m. Montague noticed dents on the metal door to Person A's apartment and that the door opened off its hinges. When Montague spoke to Person A she had to do so through a neighbor who translated Person A Spanish into English and Montague's English into Spanish.

Person A told Montague that she called IAB in regards to [REDACTED]'s brother. She did not give his name but described him as a police officer in the Bronx. Montague was told by Person A that [REDACTED] had physically “assaulted” her “earlier” and she showed Montague the resulting bruise on her arm and a mark on her neck. Montague observed Torijano to be nervous, upset and shaky during this interview at the scene. There was no testimony as to what time [REDACTED] assaulted her, but it had to be some time after Bautista and Perez responded to the scene and saw no evidence of violence.

According to Montague, Person A stated that the Respondent came to her apartment and was angry that she had called the police on [REDACTED]. She alleged that the Respondent threatened her and told her he would kill her. She stated that he also damaged her apartment door. Person A denied that the Respondent physically attacked her.

Montague conceded during her testimony that she did not have definitive proof that the Respondent damaged the door.

This Court finds that Person A story, as told by Montague, cannot be considered credible evidence for several reasons. First and foremost, Person A failed to cooperate with the District Attorney's office in the criminal case that she brought against the Respondent with the same allegations that her hearsay statements bring before this Court. That criminal case needed her live testimony at trial to sustain the charges and she, by her deliberate absence, failed to provide that. As such, her lack of cooperation caused the criminal case to be dismissed.

Person A also failed to make herself available for this trial. This apparent deliberate avoidance of her supporting the allegations that she made against the Respondent casts a very dark shadow over her credibility. In addition, while hearsay evidence is admissible in this forum, it too must be credible. Montague questioned Person A through a neighbor who was acting as an interpreter. There is no way for this Court to know the actual questions that the neighbor asked Person A in Spanish because Montague was not fluent in the language, nor Person A who Montague noted was nervous, upset and shaky, understood the questions she was being asked. Had she appeared to testify, these doubts would have been cleared up through direct and cross-examination.

There was also no eyewitness to the incident which could corroborate Person A version of what occurred.

The Respondent told this Court that when he arrived at Person A apartment, she was very angry and cursed at him and slammed the door in his face "really, really hard."

The dents and the paint damage to the door were present before that day. He did not remember if the door was off the hinge. The Respondent admitted that he knocked "pretty hard" three or four times but she did not reply or open the door. He denied using his shoulder or kicking the door to force it open. He stated that she slammed the door harder than he hit it and Person A never accused him of breaking the door. When he knocked on the door, he asked her to open it but denied threatening Person A in any way.

The Respondent further told this Court that after he was charged with damaging the door, his brother, [REDACTED], told him that six months prior he broke the door by kicking it open, off the hinge. [REDACTED] also stated that if the door is slammed hard enough the door will come off the hinge, which required him to be constantly fixing it. Given the volatile relationship that [REDACTED] and Person A seem to have, the notion that [REDACTED] broke his apartment door during a previous bout of alcohol and altercation with Person A is not beyond the realm of the possible. This Court is also mindful that [REDACTED] did attack her that day, which may have led to the door to be further damaged by that renewed violence between him and Person A

Based on the foregoing, the Respondent is found Not Guilty of Specification Nos. 1 and 3.

Specification Nos. 4 and 5

The Respondent is charged in Specification No. 4, with failing to immediately identify himself as a member of the Department to responding officers at the scene, including Sergeant Montague, after he was involved in a police incident. In Specification No. 5, he is further charged with being discourteous to Montague in that he stated in sum and substance, "What the fuck that's my brother."

Montague learned that the Respondent was a police officer, first from Person A then, when she saw a photograph in apartment █ in which he was in uniform. She stated that when she saw him on the street, she did not have a conversation with him about being a police officer, she "just stated officer report to the 48 Precinct. At that point [she] recognized the face and...put it together." She knew he was a police officer "within 30 seconds" after he got to the scene. She also acknowledged to that once she addressed him as "officer" they both understood that he was a uniformed member of the Department. She stated that, at the point she addressed him as a police officer, there was no reason for him to identify himself as one. While she did state that she was not one hundred percent sure that he was a police officer when he first pulled up to the scene, this Court finds that when she told him that she would suspend him after she heard him mumble something, that she was more than reasonably sure that he was an officer; she had no authority to suspend a civilian. More importantly, by addressing the Respondent as officer, she gave him the message, as he testified to, that there was no need for him to further identify himself as an officer after she just did.

When the Respondent drove up to the scene, he saw Tanzi and Montague putting the handcuffed █ in their car. At that point, Montague heard the Respondent say "What the fuck" [and] that's my brother." She also heard him mumble something that she could not understand. The Respondent admitted to using profanity when exiting his vehicle, because he was upset about █ being arrested, but claimed it was directed towards █ He conceded that Montague heard what he said and she believed that his profanity was directed at her.

This Court finds that while the Respondent claims that his profanity was not directed towards Montague, it was nevertheless hurled towards her in anger during the time that she was attempting to put a person under arrest in her vehicle. The fact that she believed that it was directed towards her is a strong indication that the Respondent did not narrow the direction of his profanity just towards [REDACTED] It is also important to note that, as a police officer, he should have known that it is inappropriate and discourteous for an officer to use profanity, in any fashion, in response to actions being taken by a superior officer.

Based on the forgoing, the Respondent is found Not Guilty of Specification No. 4 and Guilty of Specification No. 5.

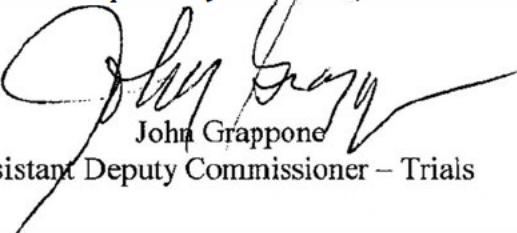
#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

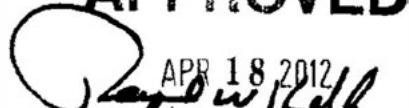
The Respondent has been found Guilty of being discourteous to Sergeant Montague. As this Court previously pointed out, he directed his profanity in her direction while she was in the process of effectuating the arrest of [REDACTED] His conduct cannot be excused because he was upset that his brother was being arrested; he is a police officer and failed to act in a professional and respectful manner towards a superior officer.

Accordingly, it is recommended that the Respondent forfeit a penalty of 15 days time previously served on suspension. It is also recommended that the additional 15 suspension days he already served be restored to him.

Respectfully submitted,

  
John Grappone  
Assistant Deputy Commissioner – Trials

**APPROVED**

  
APR 18 2012  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

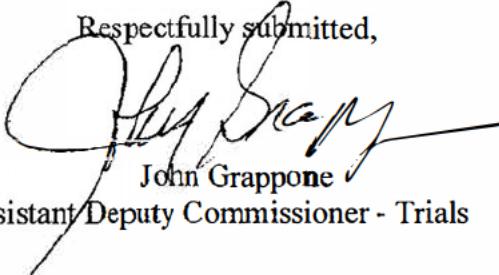
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER RAUL GABRIEL  
TAX REGISTRY NO. 936630  
DISCIPLINARY CASE NO. 85237/09

The Respondent on his last three annual performance evaluation received ratings of 4.0 "Highly Competent," 3.5, "Above Competent" and 4.0 "Highly Competent." The

On May 6, 2009, based on his overall record, the Respondent was placed on Level II Disciplinary Monitoring. The Respondent has no further disciplinary record.

For your consideration.

Respectfully submitted,  
  
John Grappone  
Assistant Deputy Commissioner - Trials